

SENATE RECORD VOTE ANALYSIS

104th Congress

1st Session

Vote No. 143

May 2, 1995, 12:50 p.m.

Page S-5941 Temp. Record

PRODUCT LIABILITY/Medical Malpractice Substitute Proposal

SUBJECT: Product Liability Fairness Act . . . H.R. 956. Gorton motion to table the Kennedy substitute amendment No. 607 to the McConnell amendment No. 603 to the Gorton substitute amendment No. 596.

ACTION: MOTION TO TABLE AGREED TO, 55-45

SYNOPSIS: As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment would apply only to Federal and State civil product liability cases. It would abolish the doctrine of joint liability for noneconomic damages, would create a consistent standard for the award of punitive damages, and would limit punitive damage awards.

The McConnell amendment would reform Federal and State medical malpractice laws by eliminating joint liability for noneconomic and punitive damages, capping punitive damages at 2 times the sum of economic and noneconomic losses (see vote No. 139), creating a 2-year statute of limitations starting from the time of discovery of an injury, allowing for periodic payment of awards over \$100,000, requiring the reduction of awards by the amount of compensation received from collateral sources, limiting attorney contingency fees to of the first \$150,000 recovered and of any additional amount recovered, and encouraging States to adopt alternative dispute resolution mechanisms.

The Kennedy substitute amendment to the McConnell amendment would enact the medical malpractice proposals from S. 2351, the failed Health Care Bill of the previous Congress (see 103d Congress, second session, vote Nos. 287-291), as follows:

- States would be required to adopt at least one of the following alternative dispute resolution mechanisms: arbitration; claimant-based binding arbitration; mediation; early neutral evaluation; certificate of merit; or any other mechanism approved by the National Health Board (the National Health Board does not exist; it was a proposal contained in the Health Care Bill);
- attorney contingency fees would be limited to one-third of the first \$150,000 awarded and one-fourth of any additional amount awarded;
- rewards would be reduced by the amount equal to any collateral payments received;

(See other side)

YEAS (55)			NAYS (45)			NOT VOTING (0)	
Republicans (49 or 91%)	Democrats (6 or 13%)		Republicans (5 or 9%)	Democrats (40 or 87%)		Republicans (0)	Democrats (0)
Abraham	Helms	Exon	Cohen	Akaka	Inouye		
Ashcroft	Hutchison	Graham	D'Amato	Baucus	Johnston		
Bennett	Inhofe	Heflin	Shelby	Biden	Kennedy		
Bond	Jeffords	Lieberman	Simpson	Bingaman	Kerrey		
Brown	Kassebaum	Robb	Specter	Boxer	Kerry		
Burns	Kempthorne	Rockefeller		Bradley	Kohl		
Campbell	Kyl			Breaux	Lautenberg		
Chafee	Lott			Bryan	Leahy		
Coats	Lugar			Bumpers	Levin		
Cochran	Mack			Byrd	Mikulski		
Coverdell	McCain			Conrad	Moseley-Braun		
Craig	McConnell			Daschle	Moynihan		
DeWine	Murkowski			Dodd	Murray		
Dole	Nickles			Dorgan	Nunn		
Domenici	Packwood			Feingold	Pell		
Faircloth	Pressler			Feinstein	Pryor		
Frist	Roth			Ford	Reid		
Gorton	Santorum			Glenn	Sarbanes		
Gramm	Smith			Harkin	Simon		
Grams	Snowe			Hollings	Wellstone		
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

- courts would be permitted to require the payment of awards on a periodic basis; and
- awards would be granted to States for malpractice reform demonstration projects.

Debate was limited by unanimous consent. Following debate, Senator Gorton moved to table the Kennedy amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The Kennedy amendment is a watered-down version of the McConnell amendment. We have the votes to pass the McConnell amendment, so we see no point in accepting the Kennedy amendment as a substitute for it.

Those opposing the motion to table contended:

The provisions of the Kennedy amendment are from last year's health care bill. It would require States to adopt alternative dispute resolution mechanisms, it would limit attorney fees, and it would encourage States to innovate in reducing medical malpractice liability costs. In many ways it mirrors the McConnell amendment, though the McConnell amendment also contains many extreme elements that it does not. For example, the McConnell amendment would severely limit the doctrine of joint liability, and would set an impossibly high standard for awarding punitive damages. We do not think it is appropriate to go as far as the McConnell amendment would in overriding State laws regarding medical malpractice, and therefore we support the Kennedy amendment as a reasonable substitute for it.